

FILED

JUN 14 1945

CHARLES ELMORE ORONLEY  
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 128

PEARL McADEN,

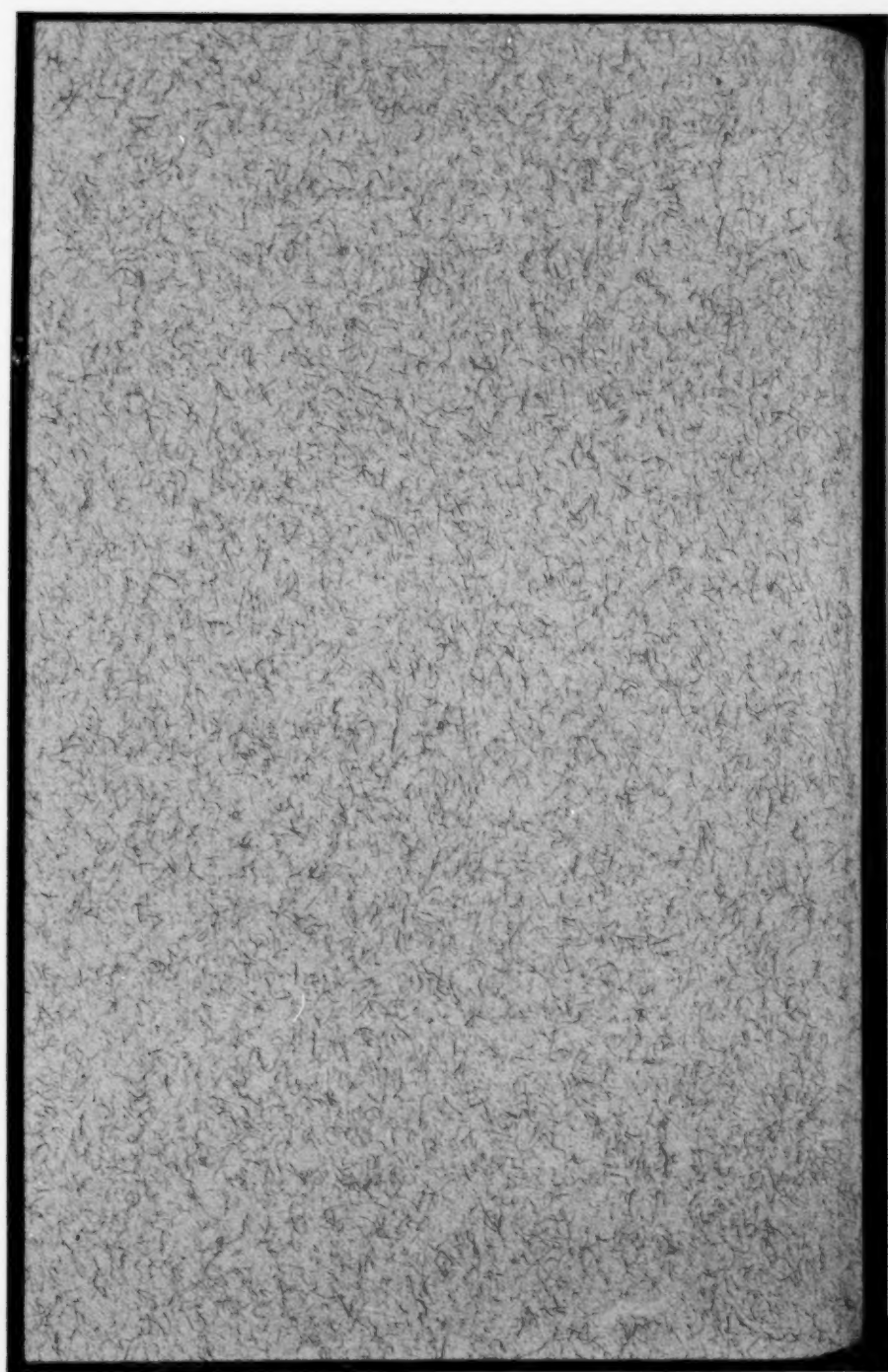
*Petitioner,*

vs.

STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF FLORIDA  
AND BRIEF IN SUPPORT THEREOF.

PATRICK C. WHITAKER,  
CHARLES F. BLAKE,  
THOS. P. WHITAKER,  
*Counsel for Petitioner.*



# INDEX

## SUBJECT INDEX

|                                                                         | Page |
|-------------------------------------------------------------------------|------|
| Petition for writ of certiorari.....                                    | 1    |
| Summary statement of the matter involved.....                           | 1    |
| Jurisdictional statement.....                                           | 4    |
| Question presented and reason relied on for allow-<br>ance of writ..... | 4    |
| Prayer for writ.....                                                    | 5    |
| Brief in support of petition.....                                       | 7    |
| Jurisdiction.....                                                       | 7    |
| Statement of the case.....                                              | 8    |

## INDEX TO AUTHORITIES CITED

|                                                                                                           |    |
|-----------------------------------------------------------------------------------------------------------|----|
| <i>Brown v. State of Mississippi</i> , 297 U. S. 278; 56 Sup. Ct. 461.....                                | 22 |
| <i>Chambers v. State of Florida</i> , 309 U. S. 227; 60 Sup. Ct. 472.....                                 | 20 |
| <i>Collier v. Baker, Sheriff, Southern Reporter Advance Sheet of March 1, 1945</i> , 20 So. (2d) 653..... | 23 |
| <i>Crosby v. State</i> , 90 Fla. 381; 106 So. 741.....                                                    | 36 |
| <i>Edelstein v. United States</i> , 149 Fed. 636.....                                                     | 37 |
| <i>Gannon v. Stevens</i> , 13 Kn. 459.....                                                                | 36 |
| <i>Glasser v. United States</i> , 315 U. S. 60; 62 Sup. Ct. 457..                                         | 21 |
| <i>Johnson v. Zerbst</i> , 304 U. S. 458, 58 Sup. Ct. 1019....                                            | 20 |
| <i>Meyers v. State</i> , 112 Neb. 149, 198 N. W. 871.....                                                 | 37 |
| <i>Nash v. Hoxie</i> , 59 Wis. 384, 18 N. W. 408.....                                                     | 36 |
| <i>OBrien v. State</i> , 125 Ind. 38; 25 N. E. 137.....                                                   | 36 |
| <i>Powell et al. v. State of Alabama</i> , 287 U. S. 45, 53 Sup. Ct. 55.....                              | 21 |
| <i>State ex rel. Brown v. Dewell, Judge</i> , 123 Fla. 785; 167 So. 687.....                              | 26 |
| <i>State v. Berberick</i> , 38 Mont. 423, 100 Pac. 209.....                                               | 37 |
| <i>Suton v. Commonwealth</i> , 207 Ky. 597, 269 S. W. 754..                                               | 37 |
| <i>State ex rel. Everglades Cypress v. Smith, Judge</i> , 104 Fla. 91; 139 So. 794.....                   | 34 |
| <i>State v. Robertson</i> , 26 S. C. 117, 1 S. E. 443.....                                                | 36 |
| <i>United States v. Aaron Burr</i> , 25 Fed. Cas. 30, No. 14692-d.....                                    | 31 |
| <i>Ward v. State of Texas</i> , 316 U. S. 547, 62 Sup. Ct. 1139..                                         | 22 |

## STATUTES CITED

|                                                              | Page     |
|--------------------------------------------------------------|----------|
| Federal Constitution, Article V . . . . .                    | 4, 8, 10 |
| Federal Constitution, Article VI . . . . .                   | 4, 8, 10 |
| Federal Constitution, Section XIV . . . . .                  | 4, 8, 10 |
| Florida Constitution, Declaration of Rights, Sec. 11 . . . . | 2, 17    |
| Florida Statutes of 1941, Section 29.01 . . . . .            | 25       |
| Florida Statutes of 1941, Section 29.02 . . . . .            | 25       |
| Florida Statutes of 1941, Section 29.03 . . . . .            | 25       |
| Florida Statutes of 1941, Section 27.04 . . . . .            | 23       |
| Black's Law Dictionary . . . . .                             | 36, 37   |
| 1 Wigmore on Evidence, Section 479 . . . . .                 | 37       |

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

---

No. 128

---

PEARL McADEN,

*Petitioner,*

*vs.*

STATE OF FLORIDA

---

**PETITION FOR WRIT OF CERTIORARI**

---

*To the Honorable Harlan Fiske Stone, Chief Justice of the  
Supreme Court of the United States, and the Associate  
Justices Thereof:*

**Summary Statement of the Matter Involved**

Your petitioner, Pearl McAden, respectfully represents that on February 7, 1944, an indictment was returned by the grand jury of the Thirteenth Judicial Circuit of the State of Florida, in and for Hillsborough County, charging him in one count with first degree murder; that thereafter, towit: on February 11, 1944, petitioner was arraigned and entered his plea of not guilty to said charge and the Judge

of said court, at that time, set said case for trial for April 5, 1944. On March 22, 1944, petitioner filed motion to require the State Attorney to furnish to him or his counsel a complete list of all witnesses intended to be used by the State at the trial of said cause, and on March 24, 1944, the court entered an order requiring the State Attorney to furnish petitioner's counsel with a complete list of said witnesses; on March 25, 1944, the State Attorney served counsel for petitioner with a list of State witnesses in obedience to said order, and filed with the Clerk a praecipe for witness subpoenas to be issued for said witnesses; on April 3, 1944, petitioner filed and presented to the trial Judge a motion for subpoena *duces tecum*, and on the same day the said Judge entered an order denying said motion for subpoena *duces tecum*.

Thereafter the case was called for trial on April 5, 1944, as previously set, and resulted in a verdict of guilty of murder in the second degree; thereafter petitioner filed motion for new trial, and included in said grounds was the following: "Defendant was denied a fair and impartial trial as guaranteed by the Bill of Rights of the State of Florida for the reason that he was denied the right to compulsory process, and, in fact, was denied process of the court, which constituted a denial of a fundamental right guaranteed by the Declaration of Rights", and also included the further ground: "This defendant was denied the right of compulsory process as guaranteed by Section 11 of the Bill of Rights of the Florida Constitution, as well as Amendment 6 of the Federal Constitution, which guaranteed to him compulsory process for obtaining witnesses in his favor", and also included the further ground: "This defendant was denied in the trial of this cause the equal protection of the law as guaranteed by Amendment 14 of the Federal Constitution, as well as denied due process of law as guaranteed by Amendments 5 and 14 of the Federal Constitution"; and

the trial court, on April 22, 1944, entered an order denying said motion for new trial and on said date, adjudged petitioner to be guilty of murder in the second degree and imposed final judgment and sentence of the law upon petitioner by ordering that he be confined in the State's prison of the State of Florida for the remainder of petitioner's natural life.

Thereafter petitioner appealed to the Supreme Court of Florida, the highest appellate court of said State, to have reviewed said trial, proceedings, sentence and final judgment, and in his assignments of error, specifically complained, among other things, of the order of the trial Judge in denying to him compulsory process, and also denying to him a fair and impartial trial and due process, and equal protection of the law all as guaranteed by Sections 11 and 12 of the Declaration of Rights of the Florida Constitution, and Articles 5 and 6 of the Amendments to the Federal Constitution, as well as Article 14 of the Amendments to the Federal Constitution.

Thereafter, on January 30, 1945, the Supreme Court of Florida rendered its opinion and final judgment, affirming the judgment and sentence of the lower court; thereafter petitioner duly filed petition for rehearing, which said Supreme Court did, on March 14, 1945, enter its order denying that petitioner has exhausted all remedies available to him under the laws of the State of Florida; that thereafter petitioner, on the 14th day of March, 1945, filed in the Supreme Court of Florida his petition for order staying the execution and enforcement of said judgment so that he might make this application to this Honorable Court for a writ of certiorari, and the said Supreme Court did, on March 14, 1945, enter its order granting petitioner's application for a stay of the execution and enforcement of said judgment for a period of 90 days from said date, so that this application might be made.



### **Jurisdictional Statement**

The final decision and judgment of the Supreme Court of Florida was entered on the date hereinabove given and the jurisdiction of this court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229; 43 Stat. 937; 28 U. S. C. A. 344. This petitioner asserts and claims that rights, privileges and immunities secured and guaranteed to him under the Constitution of the State of Florida, as well as the Constitution of the United States, have been and were denied to him through the arbitrary action of the trial Judge in denying to him compulsory process and due process.

### **Question Presented and Reason Relied On for Allowance of Writ**

The arbitrary denial to petitioner of compulsory process deprived him of the right guaranteed under Section 11 of the Declaration of Rights of the Constitution of Florida, which secured to him the right of compulsory process, as well as the right to due process and a fair and impartial trial as guaranteed by Section 12 of said Declaration of Rights of said Constitution, and also deprived petitioner of the rights protected and secured to him by Articles 5 and 6 of the Amendments to the Federal Constitution, and Article 14 of the Amendments to said Constitution. The question involves a denial to this petitioner of the process of the court enabling him to protect and defend himself against said charge. The court denied petitioner this process, and this action of the court was a denial to petitioner of a fundamental right secured to him by the State and Federal Constitutions, and denied to him a fair and impartial trial within the provisions, as well as the spirit of said Constitutions, and under this condition, the trial court lost jurisdiction over said cause, as well as the petitioner, and was without



power or authority to impose judgment or sentence upon petitioner, and unless this Honorable Court grants writ of certiorari as sought herein, the arbitrary action of the State courts will be made effective and this petitioner will be unlawfully and illegally deprived of his liberty in a proceeding which disregarded not only his rights secured by the Constitutions, State and Federal, but where long established procedural rights have been ignored and disregarded.

### **Prayer**

Wherefore, your petitioner prays that writ of certiorari issue under the seal of this court, directed to the Supreme Court of Florida, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Supreme Court, had in the case of Pearl McAden, Appellant, vs. State of Florida, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Supreme Court be reversed by this court, and for such further relief as to this court may seem proper.

Dated this 29th day of May, A. D. 1945.

PATRICK C. WHITAKER,  
CHARLES F. BLAKE,  
THOMAS P. WHITAKER,  
*Counsel for Petitioner.*